

June 11, 2021

**Via Electronic Filing**

Jocelyn G. Boyd, Esquire  
Chief Clerk and Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

**Re:** Public Service Commission review of South Carolina Code of Regulations 103-300, *et seq.*, and 103-400, *et seq.*  
Docket No. 2020-247-A

Dear Ms. Boyd,

Dominion Energy South Carolina, Inc. (“DESC” or “Company”) appreciates the opportunity to submit comments as part of the Commission’s review of Articles 3 and 4 rules and regulations related to Electric and Gas Systems. The Company specifically responds in more depth to the comments of the Southern Environmental Law Center, Upstate Forever, and Friends of Beaverdam Creek (collectively “SELC”) in this docket. Those groups impermissibly request the Commission promulgate a regulation addressing “advance” approval for an intrastate pipeline siting and altering state law on eminent domain. See SELC Ltr. dated April 6, 2021. The Commission lacks the jurisdiction on both requests.

It is axiomatic that the “PSC is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly.” Kiawah Prop. Owners Group v. Public Service Comm’n., 359 S.C. 105, 109, 597 S.E.2d 145, 147, (2004); City of Camden v. South Carolina Pub. Serv. Comm’n., 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984). The General Assembly limited the jurisdiction of the Commission to the enumerated powers set forth in Title 58 of the South Carolina Code of Laws. See, e.g., S.C. Code Ann. § 58-3-140(E). The Commission’s authority to implement regulations is not unlimited. Rather, the General Assembly limited the Commission to promulgating regulations “not inconsistent with law” or Title 58. S.C. Code Ann. § 58-27-150. The Commission lacks jurisdiction to exceed those bounds imposed by the General Assembly. See Camden, 283 S.C. at 382-83, 323 S.E.2d at 521.

First, SELC seeks a regulation to apply “in advance” to the construction of proposed gas pipelines in South Carolina. See SELC Letter p. 2. SELC asks the Commission to alter the policy enacted by the General Assembly for gas pipeline construction and create a new policy—a

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“pre-approval” process administered by the Commission. The Commission must reject this proposed regulation and allow the General Assembly to make policy.

In order to regulate an issue, the General Assembly must first vest the Commission with the authority to do so. Kiawah, 359 S.C. at 109, City of Camden, 283 S.C. at 382. The General Assembly has not expressly or implicitly done so in regards to gas pipeline construction. Rather, the General Assembly made a policy decision to restrict the Commission’s jurisdiction on this issue to that mandated in the Natural Gas Rate Stabilization Act (“RSA”). See S.C. Code Ann. §§ 58-5-400, et. seq. The statutory process creates the Natural Gas Rate Stabilization Act proceeding before the Commission and limits the Commission to accounting for the costs associated with construction of a gas pipeline to “be the appropriate basis on which rates were set.” S.C. Code Ann. §§ 58-5-400, et. seq. The Commission has no role in the construction calculus undertaken by the utility.

The General Assembly limited the Commission’s authority to cost recovery post construction. By statutorily limiting the Commission’s role in pipeline construction, the General Assembly expressly delineated the jurisdictional limits of the Commission over this issue. The proposed regulation that alters, adds to, or in any manner deviates from the statutory process would be “inconsistent with law” and would, by definition, exceed or alter the Commission’s statutorily delegated jurisdiction on this issue. The Commission must reject this proposed regulation and allow the General Assembly to make policy.

SELC also asks this Commission to undertake review of a utility’s exercise of eminent domain in the gas pipeline construction process. See SELC Proposed Regulation at ¶ F, G, H, and I. This likewise asks the Commission to exceed its jurisdiction. The General Assembly granted utilities the power of eminent domain. S.C. Code Ann. § 58-27-130. SELC simply disagrees with that policy decision. The Commission is not the forum to voice displeasure with the state’s eminent domain procedures.

Title 28, Chapter 2, known as “The South Carolina Eminent Domain Procedure Act” sets forth the eminent domain process, the protections, challenges, and due process rights available to the landowner, and resolution methods and venues for those disputes. The General Assembly has expressly stated that that process “shall constitute the exclusive procedure whereby condemnation may be undertaken in this State.” S.C. Code Ann. § 28-2-60; see also S.C. Code Ann. § 28-2-210 (“Any condemnor may institute an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose. The provisions of this act constitute the exclusive procedure whereby condemnation may be undertaken in this State.”).

No confusion can exist as to whether this process is the exclusive method for eminent domain in South Carolina because “[i]t is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State.” S.C. Code Ann. § 28-2-20. The desire for one, uniform process was so important to the General Assembly that it further codified its intent that the Title 28, Chapter 2 eminent domain rules “shall prevail” in “the event of conflict between this act and any other law with respect to any subject governed by this act.” Id.

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Relevant here, the Act vests the circuit courts of this State with the exclusive authority to adjudicate disputes between a landowner and the condemnor. See generally S.C. Code Ann. §§ 28-2-210 thru 28-2-370. The determination whether a condemnation was for a public purpose or in the public interest<sup>1</sup> can only be adjudicated in circuit court. Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 275, 802 S.E.2d 265, 794 (2017) (“In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute.”). The General Assembly created no role for the Commission in the exclusive procedures set forth in the Act. That is because “it is for the legislature to determine, in the first instance, the question whether the use for which it is proposed to condemn property is a public use.” Bookhart v. Central Electric Power Cooperative, Inc., 219 S.C. 414, 424, 65 S.E.2d 781, 785 (1951). That decision must be made by our circuit courts and cannot be made by the Commission.

Any claim that the Commission can “fill in the gaps” or supplement eminent domain procedures by regulation without impacting the Act is manifestly without merit. As noted, the General Assembly directed the Act to control over all other processes. In fact, the Act “shall prevail” even over the South Carolina Rules of Civil Procedure. S.C. Code Ann. § 28-2-120. If the Act trumps those rules, then it is beyond contestation that the General Assembly intended it to trump any possible regulation promulgated by this Commission.

The General Assembly excluded the Commission from eminent domain procedures. In so doing, the General Assembly expressly precluded a regulation that would alter, add to, or in any manner deviate from the statutory process. Such a regulation would exceed the jurisdiction of the Commission. The Commission must reject this proposed regulation and adhere to the General Assembly’s policy declaration on eminent domain.

The Company appreciates consideration of its comments by the Commission and looks forward to the continued dialogue for possible revisions to Articles 3 and 4. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

s/ *Michael J. Anzelmo*

Michael J. Anzelmo  
Counsel for Dominion Energy South Carolina, Inc.

cc: K. Chad Burgess, Esquire and Matthew W. Gissendanner, Esquire

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<sup>1</sup> SELC seeks to have the Commission make a finding of public interest necessary for a condemnation in its proposed regulation.